REMARKS

Reconsideration of the application in light of the amendments and the following remarks is respectfully requested. The specification has been amended to indicate that certain terms (Eudragit®, Methocel®, Metolose®, Gelucire®, Miglyol®, Kollidon®, and Prograf®) are trademarks. Claim 1 has been amended to recite a solid pharmaceutical composition comprising tacrolimus (or an analogue thereof) dispersed or dissolved in polyethylene glycol having an average molecular weight of at least 1500 and a poloxamer, wherein the pharmaceutical composition is free of organic solvent. Support for this amendment can be found at, for example, page 25, line 35 to page 26, line 1 and original claims 13, 14, 16 and 17. Claims 2-23, 24-34, 36-42, and 51 have been amended to recite a solid pharmaceutical composition, solid dosage form, and method of preparing a solid pharmaceutical composition. Claims 12, 16, 22, 27, 34, 36, 41, 42, and 44 have been amended to delete exemplary language. Claim 43 has been amended as discussed below. Claim 51 has been amended to recite a method of preparing a solid pharmaceutical composition by (a) dispersing and/or dissolving tacrolimus or an analogue thereof in a polyethylene glycol having an average molecular weight of at least 1500 and a poloxamer to form a mixture, and (b) spraying the mixture onto a solid carrier. Claims 52-56 have been added. Support for these amendments can be found in the claims as originally filed and at page 18, lines 9-12, and page 24, lines 23-30, of the specification. Claims 30 and 35 have been canceled without prejudice or disclaimer. No new matter has been added by way of this amendment. Claims 1-29, 31-34, 36-44, and 51-56 are pending. As claims 2, 12, 38 and 39 were withdrawn from consideration, claims 1, 3-11, 13-29, 31-34, 36, 37, 40-44 and 51-56 are at issue.

Claim Objections

Claims 41 and 43 have been objected to since they recite the trademarks Eudragit® and Prograf®. The trademark Eudragit® has been deleted from claim 41.

The specification and claim 43 refer to solid pharmaceutical compositions and, in particular, the capsule dosage forms of Prograf® (see, for example, page 3, lines 5-7; page 19, lines 16-19, and page 29, line 17, of the specification). The capsule dosage forms of Prograf® have been approved under FDA New Drug Application (NDA) No. 050708. *See* Exhibit A. Accordingly, claim 43 has been amended to refer to the capsule dosage forms of NDA No. 050708. Applicants respectfully submit that claim 43 as amended is definite.

Claims 16 is objected to due to a typographical error. This error has been corrected.

Applicants respectfully request withdrawal of this objection.

Indefiniteness Rejection

Claims 1, 3-11, 13-37, 40-44 and 51 have been rejected under 35 U.S.C. § 112, second paragraph, as indefinite. The Examiner contends that the claims include broad and narrow ranges, and include the terms "about", "such as", "including", "for example", and "essentially bioequivalent" which render them indefinite.

According to the Court of Appeals for the Federal Circuit and the MPEP, the term "about" is definite. *See* MPEP §2173.05(b)(A); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983). Accordingly, the use of the term "about" does not render the claims indefinite and one of ordinary skill in the art would be apprised of the boundaries of the claim.

The terms "such as," "including," and "for example," have been deleted from the claims. The term "essentially bioequivalent" in claim 43 has been replaced by its definition on page 5, lines 14-24 of the specification.

Accordingly, applicants respectfully request withdrawal of this rejection.

Written Description Rejection

Claims 1, 3-11, 13-37, 40-44 and 51 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner argues that the specification lacks teachings as to the structural characteristics, chemical formula names, or physical properties of analogues of tacrolimus.

The specification provides support for what an analogue of tacrolimus encompasses. For example, two references (European Patent Publication No. 444659-A and U.S. Patent No. 6,387,918) describing tacrolimus analogues (including the various structures and chemical names) are incorporated by reference on the first page of the specification (*see* page 1, ll. 17-19). These references, along with the definition of "analogue" given on page 5 of the specification, provide a definite space of what an analogue encompasses. Therefore, analogues of tacrolimus would have been immediately envisaged after reading the specification.

In addition, basic chemical modifications are well known in the chemical arts. There is an inverse correlation between the level of skill and knowledge in the art and the specificity of disclosure necessary to satisfy the written description requirement. Information which is well known in the art (such as tacrolimus analogues) need not be described in detail in the specification. See, e.g., *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379-80, 231 USPQ 81, 90 (Fed. Cir. 1986); MPEP §2163.

Claims 27, 28 and 41 have been rejected as lacking written description due to the phrases "cellulose derivatives," "silica acid or a derivative or salt thereof," and "phthalate derivatives." The Examiner states that names are not given for these derivatives in the specification.

Specific "cellulose derivatives" are disclosed on page 12, lines 15-19, page 20, lines 20-28, and page 22, lines 26-36 of the specification. Specific phthalate derivatives are given on page 22 of

the specification. Specific silica acid derivatives and salts are given on pages 14, 15, and 18 of the specification. Thus, cellulose derivatives, phthalate derivatives, and silica acid derivatives are described in the specification. Additionally, the Court of Appeals for the Federal Circuit has held the term "derivative" to be definite. *See Abraxis Brosclence, Inc. v. Mayne Pharma (USA) Inc.*, 2006 U.S. App. LEXIS 28199 (Fed. Cir. 2006) (construing the term "derivative"). For at least these reasons, cellulose derivatives, phthalate derivatives, and silica acid derivatives have sufficient written description support in the specification. Accordingly, applicants respectfully request withdrawal of this rejection.

Anticipation Rejection

Claims 1, 3, 4, 6-11, 13-15, 19, 21, 22, 24, 31, 22, 36, 37, 42-44 and 51 have been rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Publication No. 21003/0180352 ("Patel"). Patel teaches at Example 20 (p. 41, paragraph 425), a composition containing tacrolimus, PEG-24 cholesterol ether (Solulan C-24), distilled monoglycerides, and deoxycholic acid coated on nonpareil seeds having a diameter of about 400 to 500 μm.

Applicants have amended claim 1 to call for a solid pharmaceutical composition comprising tacrolimus or an analogue thereof, with polyethylene glycol and poloxamer, wherein the composition is free of organic solvent. Patel does not disclose a tacrolimus formulation containing PEG and poloxamer which is free of organic solvent. Accordingly, applicants respectfully request withdrawal of this rejection.

Obviousness Rejection

Claims 1, 3-11, 13-37, 40-44 and 51 have been rejected under 35 U.S.C. § 103(a) as obvious over Patel. Patel does not teach or suggest a tacrolimus composition containing PEG and poloxamer, which is free of organic solvents. Patel uses organic solvents to prepare his formulations and dries them to "minimize residual solvent levels" (paragraph 397), acknowledging that some solvent remains. Thus, Patel fails to disclose or suggest a solid pharmaceutical tacrolumis composition that is free of organic solvent as recited in claim 1. As such, a *prima facie* case of obviousness has not been established. Accordingly, applicants respectfully request withdrawal of this rejection.

Double Patenting Rejection

Claims 1, 3-11, 13-37, 40-44 and 51 are provisionally rejected on the ground of nonstratutory obviousness-type double patenting as obvious over claims 1, 6-12, 17-23, 26-32, 34-37, 63 and 64 of copending Application No. 10/513,807. The '807 application currently stands rejected over prior art. Applicants, therefore, request this rejection be held in abeyance until allowance of the '807 application.

CONCLUSION

Based on the above amendments and arguments, this application is believed to be in condition for allowance, which is earnestly solicited. If there are remaining issues that the Examiner believes could be addressed by conducting an interview or entering an Examiner's Amendment, the Examiner is cordially invited to contact the undersigned agent to discuss such issues.

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Respectfully submitted,

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